

3-21-02

DAC
\$
#6

Atty Dkt. No. 60,680-491
Dana R. Travis 5389 CVIFS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Ziech et al.

Serial No.: 09/772,785 Group Art Unit: 3619

Filed: January 30, 2001 Examiner: Toan To

For: MODULAR CAST INDEPENDENT FRONT SUSPENSION
SUBFRAME

Attorney Docket No.: 60,680-491

Box DAC
Assistant Commissioner For Patents
Washington, D. C. 20231

RECEIVED

MAR 25 2002

OFFICE OF PETITIONS

PETITION FOR REVIVAL OF AN UNINTENTIONALLY ABANDONED
PATENT APPLICATION UNDER 37 C.F.R. 1.137(b)/(f)

Applicants hereby petition for the revival of the above-captioned application. The application became abandoned on or about February 3, 2002 pursuant to 37 C.F.R. § 1.213(c) because Applicants failed to (i) timely notify the U.S. Patent and Trademark Office of the filing of a corresponding application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing; and (ii) rescind a prior request for non-publication of the application. Upon learning of the abandonment, Applicants contacted the Examiner in the case to advise him of the abandonment and determine the proper course of action. The Examiner subsequently advised Applicants that Applicants could not petition to revive the application until the U.S. Patent and Trademark Office issued a formal Notice of Abandonment. On March 18, 2002, Applicants

CERTIFICATE OF EXPRESS MAILING

I hereby certify that this PETITION FOR REVIVAL OF AN UNINTENTIONALLY ABANDONED PATENT APPLICATION UNDER 37 C.F.R. 1.137(b)/(f) is being deposited with the United States Postal Service as Express Mail, No. ET931281022US, postage prepaid, in an Express Mail envelope addressed to the Box DAC, Assistant Commissioner for Patents, Washington, D.C. 20231 on this 197th day of March, 2002.

03/22/2002 AWONDAF1 00000052 042223 09772785

01 FC:141 1280.00 CH


Mary F. Peltier

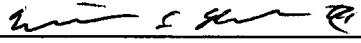
Atty. Dkt. No.: 60,680-491
Dana Ref. No. 5389 CVIFS

received the formal Notice of Abandonment from the U.S. Patent and Trademark Office and have timely filed this petition. A request to rescind Applicants' prior request for non-publication is attached hereto as Exhibit A. An Office Action was outstanding at the time the application became abandoned. A Reply to the Office Action was filed within the time period set forth for reply in the Office Action (absent the abandonment) and a copy of the Reply is attached hereto as Exhibit B.

The undersigned states that the entire delay in filing the request to rescind Applicants' prior request for non-publication from the due date pursuant to 37 C.F.R. § 1.213(c) until the filing of this petition was unintentional.

Applicants request that the petition fee of \$1280.00 be charged to Deposit Account No. 04-2223. Applicants also request that any additional fee required also be charged to Deposit Account No. 04-2223. A duplicate copy of this petition is attached.

Respectfully submitted,



William F. Kolakowski III
Registration No. 41,908
Customer No. 26127
DYKEMA GOSSETT PLLC
39577 Woodward Ave., Suite 300
Bloomfield Hills, MI 48304-2820
(248) 203-0822
Attorney for Applicants

BH01\\334377.1
ID\ WFK

Atty. Dkt. No.: 60,680-491
Dana Ref. No. 5389 CVIFS



RECEIVED
MAR 25 2002
OFFICE OF PETITIONS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Ziech et al.

Serial No.: 09/772,785 Group Art Unit: 3619

Filed: January 30, 2001 Examiner: Toan To

For: MODULAR CAST INDEPENDENT FRONT SUSPENSION
SUBFRAME

Attorney Docket No.: 60,680-491

Assistant Commissioner For Patents
Washington, D. C. 20231

REPLY PURSUANT TO 37 C.F.R. § 1.111

Dear Sir:

This reply is responsive to the Office Action mailed November 28, 2001. Please amend the above-identified application as follows:

IN THE CLAIMS:

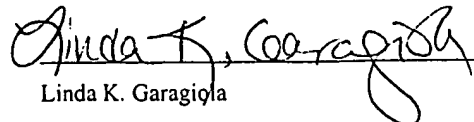
Please cancel claim 19.

Please add the following new claim:

21. (New) The subframe of claim 1 wherein first and second lower suspension control arms and said first and second upper suspension control arms comprise an independent front suspension for said vehicle.

CERTIFICATE OF MAILING

I hereby certify that this Reply Pursuant to 37 C.F.R. § 1.111 is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231 on this 28th day of February, 2002.


Linda K. Garagiola

REMARKS

I. INTRODUCTION

Applicant has cancelled claim 19. Accordingly, claims 1-18 and 20 are presently pending in this application. Applicants hereby request further examination and reconsideration of the application in view of the foregoing amendments and the following arguments and evidence.

II. CLAIM OF PRIORITY

The Office Action Summary acknowledges a claim of foreign priority in the above-identified application. Applicants note that Applicants have not made a claim for foreign priority. Applicants have, however, made a claim for domestic priority under 35 U.S.C. § 119(e) to prior filed U.S. Provisional Application Serial No. 60/258,823. Applicants would appreciate acknowledgment of Applicants' claim of domestic priority.

III. OBJECTION TO THE CLAIMS

Claims 16 and 19 stand objected to because the claims are identical and both depend from claim 16. In accordance with the Examiner's suggestion, Applicants have cancelled claim 19 and therefore request that the objection be withdrawn.

IV. NEW CLAIM 21

Claim 21 has been added as a dependent claim based on independent claim 1. Claim 21 recites that the lower and upper suspension control arms "comprise an independent front suspension for said vehicle." Support for new claim 21 may be found throughout the specification and drawings including at page 5, lines 26-27. Accordingly, Applicants submit that new claim 21 does not add new matter.

Atty. Dkt. No.: 60,680-491
Dana Ref. No. 5389 CVIFS

IV. REJECTION OF CLAIMS 4, 9, 12, 16 AND 19-20 UNDER 35 U.S.C. § 112

Claims 4, 9, 12, 16, and 19-20 stand rejected under 35 U.S.C. § 112, ¶ 2 as indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention. Applicants have cancelled claim 19. Applicants respectfully submit, however, that the rejection of claims 4, 9, 12, 16 and 20 under 35 U.S.C. § 112, ¶ 2 is improper.

Claims 4, 9, and 12 stand rejected because "it is unclear which element of the sub-frame that refers to 'third cross member'." Office Action page 2, lines 15-16. The Examiner notes that Applicants have illustrated a cross member 34 in Figure 2 as connected to reinforcement members 30, 32 of the frame 20. Applicants note, however, that Figure 9 illustrates, and page 12, lines 13-23 discusses, an embodiment of the invention in which a cross member 214 is integrated with the subframe and used to support the vehicle engine. (See e.g., page 12, lines 18-19 "member 214 is provided to support the vehicle engine and may take the place of cross member 34 of frame 20 shown in Figures 1-2.").

Claims 12 and 20 stand rejected as improperly dependent on independent claims 6 and 13, respectively, because the Examiner asserts that the independent claims are not generic to the embodiment of the invention having a "steering gear". Applicants respectfully disagree. Figures 1-7 all illustrate the same subframe 62. As set forth in the specification:

Referring to Figure 7, in a further enhancement of the present invention, subframe 62 may be configured to receive a steering gear 162....

Page 9, lines 22-24.

Because each of claims 4, 6, 12, 16, and 20 particularly point out and distinctly claim the subject matter which Applicants regard as their invention, Applicants submit that the rejection of claims 4, 6,

Atty. Dkt. No.: 60,680-491
Dana Ref. No. 5389 CVIFS

12, 16 and 20 under 35 U.S.C. § 112, ¶ 2 is improper. Accordingly, Applicants request that the rejection be withdrawn.

VI. REJECTION OF CLAIMS 1-20 UNDER 35 U.S.C. § 102(b)

Claims 1-20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kami et al. (U.S. Patent No. 5,560,651). Applicants respectfully submit that the rejection is improper because Kami et al. does not disclose or suggest all of the limitations recited in the claims. In re Paulsen, 30 F.3d 1475, 1478-79, 31 U.S.P.Q.2d 1671 (Fed. Cir. 1994); Verdegaal Bros. v. Union Oil Co. of California, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1997) ("A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.").

Independent claims 1, 6, and 13 each recite "a subframe" including "first and second side members" and "first and second cross members, each of said first and second cross members integral with said first and second side members." Applicants respectfully submit that Kami et al. cannot meet the recited limitation.

Kami et al. discloses a subassembly for a motor vehicle. The subassembly includes a subframe SF including side members 1, 1 and cross members 2, 3. Nothing in Kami et al., however, indicates that cross members 2, 3 are "integral with" side members 1, 1. Throughout the specification, Kami et al. teaches that the side members 1, 1, and cross members 2, 3 are "coupled" to other structural elements-and, notably, the side members and cross members are not even "coupled" directly to one another. As set forth in the specification, for example:

The front and rear ends of the side members 1, 1 are coupled to outer sleeves 5 of four rubber bush mounts 4, respectively, and left and right ends of the front cross members 2 extending laterally of the vehicle body are coupled to the outer sleeves 5, 5 of the two front rubber bush

mounts 4, 4....Portions of the side members 1, 1, near their front ends, are coupled to portions of the front cross member 2, near its left and right ends, by trailing arm brackets 6₁, 6₁...

...
Left and right ends of the rear cross member 3, extending laterally of the vehicle body are coupled to the outer sleeves 5, 5 of the two rear rubber bush mounts 4, 4, Fig. 5, coupled to the rear ends of the side member 1, 1....

Column 5, lines 36-41, 44-53 (emphasis added). Nothing in Kami et al. indicates that the members of the subframe SF can be integral with one another. The term "integral" (or variations thereof) are found in Kami et al. in only one, completely different context-integrating members such as a subframe, rear suspensions, and the exhaust system. See, e.g., Column 1, lines 15-24.

Kami et al. also do not teach or suggest many of the limitations found in the dependent claims. Notably, Kami et al. teaches a subassembly including a subframe for use with rear suspensions. As such, Kami et al. does not disclose many of the claimed structural elements that are found in a subassembly for use with an independent front suspension. In particular, Kami et al. do not disclose or suggest a subframe having a "cross member configured to support an engine of said vehicle" as recited in claims 4, 9, and 16. Kami et al. also do not disclose or suggest a subframe having a cross member "configured to receive a strut rod" as recited in claims 5, 10 and in substantially similar terms in claim 17. Kami et al. also does not disclose or suggest a subframe configured to receive a "steering linkage" as recited in claim 6 and in substantially similar terms in claim 18, an "idler arm" as recited in claim 11, or a "steering gear" as recited in claims 12 and 20.¹

¹ The structural element 12, identified by the Examiner as an idler arm is actually just a "control arm" forming part of the rear

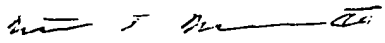
Atty. Dkt. No.: 60,680-491
Dana Ref. No. 5389 CVIFS

Because Kami et al. does not teach or suggest a subframe or subassembly meeting all of the limitations set forth in claims 1-18 and 20, Applicants respectfully submit that the rejection of claims 1-18 and 20 under 35 U.S.C. § 102(b) is improper. Accordingly, Applicants respectfully request that the rejection of claims 1-18 and 20 under 35 U.S.C. § 102(b) be withdrawn.

VII. CONCLUSION

For the above cited reasons, all of the claims presently pending in this application are believed to be allowable. If the Examiner has any further questions or concerns regarding this matter, he is invited to call the Applicants' undersigned attorney.

Respectfully submitted,


William F. Kolakowski III
Registration No. 41,908
Customer No. 26127
DYKEMA GOSSETT PLLC
39577 Woodward Ave., Suite 300
Bloomfield Hills, MI 48304-2820
(248) 203-0822
Attorney for Applicants

BH01\\329005.1
ID\ WFK

suspension. Applicants surmises that the Examiner may have been referring to element 21₁. Applicant notes, however, that this latter element is also not part of a steering linkage, but rather forms part of a connection to a torsion bar 19.